Pac. 887. The principal case, it is true, is confessedly based on no direct authority in England. But, in general, assumption of the dual capacity of judge and witness seems absolutely improper. But see WIGMORE, EVIDENCE, § 1909.

WITNESSES — PRIVILEGED COMMUNICATIONS — PHYSICIAN: WAIVER BY ALLOWING ONE OF SEVERAL PHYSICIANS TO TESTIFY. — The prosecutrix permitted one of three physicians who had treated her for the same trouble at about the same time to testify concerning the nature of her ailment. The defense then offered, over the objection of the state, the testimony of the other two physicians on the same point. *Held*, that the privilege had been waived. *State* v. *Long*, 165 S. W. 748 (Mo.).

The court takes the position that by permitting one of her physicians to testify as to the nature of her ailment, the patient abandoned her privilege as to all physicians who treated her for the same trouble. It is true that by allowing his physician to testify, the patient waives his privilege as to that physician at this and probably at subsequent trials. *Marquardt* v. *Brooklyn Heights R. Co.*, 126 App. Div. 272, 110 N. Y. Supp. 657; *McKinney* v. *Grand Street P. P. & F. R. Co.*, 104 N. Y. 352, 10 N. E. 544. And calling one of several consulting physicians will work a waiver of the privilege as to all present at the consultation. *Morris* v. *New York, O. & W. Ry Co.*, 148 N. Y. 88, 42 N. E. 410. None of these cases, however, justifies the result reached in the principal case. The mere preservation of secrecy is not the sole object of the privilege, else the courts would not generally agree that the patient may himself make public the nature of his ailment without thereby waiving the privilege. *McConnell* v. *City of Osage*, 80 Ia. 293, 45 N. W. 550. *Cf. Epstein* v. *Pennsylvania Ry. Co.*, 250 Mo. 1, 156 S. W. 699. Its true purpose is to protect confidential communications between physician and patient. The effective protection of such confidences requires that each physician, or set of physicians, be considered a distinct unit, and that a waiver of the privilege as to one should not prevent its assertion to prevent the disclosure of confidential communications to another. The weight of authority is to this effect, and opposed to the principal case. *Pennsylvania Mutual Life Ins. Co.* v. *Wiles*, 100 Ind. 92; *Barker* v. *Cunard S. S. Co.*, 91 Hun 495, 36 N. Y. Supp. 256. The privilege in question has been severely criticised, and a logical application of it may sometimes work injustice. See WIGMORE, EVIDENCE, § 2380; 10 MEDICO-LEGAL JOURNAL, 33. But the remedy in such case lies with the legislature, not in an arbitrary destruction of the privilege by the courts. See *Renihan* v. *Demien*, 103 N. Y. 573, 580.

BOOK REVIEWS.

HANDBOOK OF THE LAW OF MUNICIPAL CORPORATIONS. By Roger W. Cooley, LL.M. St. Paul: West Publishing Co. 1914. pp. xii, 711.

In this book Professor Cooley has gathered together and placed in readable form the ordinary things about municipal corporations. It is a good book, with the merits and some defects found in the books of its class: clear statement of elementary principles, full citation of cases, not much discussion and little attempt to develop fundamental principles or to criticise decisions. Nice discriminations are not to be expected, and contradictory statements are sometimes found; but frequent references to other treatises, and especially to Dillon's standard work, show that the author usually stands on safe ground.

An example of these qualities is Professor Cooley's treatment of the difference between governmental and other powers of a municipal corporation. The author, following the current practice, groups all powers as governmental and municipal; a grouping which either confuses the distinction between public and commercial municipal powers, or omits altogether the latter class. Among governmental powers, the power to extinguish fires is included (p. 137), apparently for no reason except that the city is not liable for a wrong done in the exercise of the power; while on the other hand, he is forced to class streets and sewers, along with public-service activities, among municipal powers. Parks he classes among municipal activities (p. 367), though it is pretty clear that a city is not liable for a defect in a park. He then (neglecting apparently all the cases where the city is not liable in tort) lays down the principle that the liability of a municipal corporation in tort is in most cases based upon the doctrine *respondeat superior*. For this statement no authority is cited, and it seems clear that this doctrine, based on the principal's advantage from the agent's act in business agency, has no application to a principal who is executing a public trust.

For many purposes a handbook like this may be much more useful than an elaborate four- or five-volume work; and though some of the important topics are sketchily treated, the book is trustworthy as a whole.

J. H. B.

POLARIZED LAW: three lectures on Conflicts of Law delivered at the University of London, by T. Baty, D.C.L., LL.D. London: Stevens & Haynes, 1914. pp. xv, 210.

The principle upon which these lectures were constructed was, to pass briefly over the greater part of the subject, and to treat with thoroughness a few topics of special interest to the lecturer. Topics so treated are: nationality, marriage, divorce and marital property, and foreign theories of private international law. The discussion of these subjects is illuminated throughout by Dr. Baty's shrewdness, acuteness and felicity of statement. If, like a greater scholar, he permits himself the use of strange words to characterize familiar things we have learned to forgive and forget it.

The topic usually called in our law the Conflict of Laws is, he says, absolute rights viewed through the medium of a particular law — i.e., polarized. He correctly and forcibly argues that English rules "for the occasional application of foreign law instead of" English, as he defines the subject, is a branch of the law of England. His reasons for discarding, as regulator of personal relations, the national law of a person for the law of his domicil are well chosen and convincingly expressed. His criticism of the cases of De Nicols *v.* Curlier is refreshingly frank. The reviewer cannot agree, however, with his understanding of the law of marriage or of divorce. His statement that "divorce is a quasi-criminal process" hardly represents common-law authorities. His discussion of the unsatisfactory doctrine of the "renvoi" leaves little to be desired.

A very useful portion of the book is the Appendix, containing a translation of the Hague Private-Law Conventions. American lawyers cannot take them seriously, are rather amused when Weiss and other civilians rail at our refusal to join in them, and are unmoved when France withdraws her assent; but the conventions represent much time and thought on the part of the ablest European scholars, and one is glad to have them in a trustworthy English translation.

J. H. B.